IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 20862 of 2004(H)

AGAINST THE ORDER IN EP.131/03 IN
OS.552/2002 of MUNSIFF COURT, N. PARAVUR

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PETITIONER:

VIJU S/O. VASU, KANNATTU PADATH HOUSE,
PATTANAM, VADAKKEKARA VILLAGE.

BY ADV. SRI.S.SUGATHAN

RESPONDENT:

SAMBAJI, S/O. NOVARTHI LAKSHMI NIVAS,
LOKAMALLESWARAM VILLAGE.

BY ADV. SRI.VAKKOM N.VIJAYAN
SRI.T.K.RAMAKUMAR BABU
SRI.P.ANIYAN
SMT.REENA.C.STEPHENSON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.20862/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF E.P.131/2003 IN O.S.552/02 ON THE FILE OF THE MUNSIFF COURT, N.PARUR.

EXT.P2: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN E.P.131/03 IN O.S.NO.552/02.

EXT.P3: TRUE COPY OF THE ORDER DATED 1.4.2004 PASSED BY THE MUNSIFF'S COURT, N.PARUR IN E.P.131/03 IN O.S.NO.552/02.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.20862 of 2004

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Dated: 6th June, 2007

JUDGMENT

The order of the execution court directing arrest and detention of the petitioner-judgment-debtor is under challenge. On the day the impugned order was passed the case stood posted for recording evidence regarding the means of the judgment-debtor and the wilful nature of his negligence in the matter of paying the decree debt. On that day P.W.1 was examined on the part of the respondent. Since the petitioner was absent and there was no representation for him the court closed the evidence. Relying on the evidence of P.W.1 the court found that the means of the judgment-debtor-petitioner is proved and accordingly issued warrant against the petitioner. The ground which is seriously urged in the Writ Petition is that an effective opportunity had not been given to the petitioner for substantiating his contentions in the E.P. It is true that the impugned order is issued relying solely on the evidence adduced by the respondent-decree-holder. But I am not prepared to blame the execution court for having done so since the petitioner was neither present nor had made any representation on his behalf. However

since the personal liberty of a person is involved, I am inclined to grant him one more opportunity for adducing evidence in rebuttal of the evidence adduced by the decree-holder but only on strict conditions. While granting stay this court imposed a condition that a sum of Rs.10,000/- shall be paid within one month from 15.7.2004. Learned counsel for the respondent is unable to inform me whether the above condition was complied with or not. Nevertheless the Writ Petition will stand disposed of issuing the following directions:

If the petitioner has actually complied with the condition of payment of Rs.10,000/- within the stipulated time or within two months thereafter, i.e. on or before 15.10.2004, the impugned order will stand set aside subject to the following further conditions:

The petitioner will pay a further amount of Rs.5000/- within one month from today and produce the receipt before the court below and will continue to pay every month till such time as fresh orders are passed by the execution court at the rate of Rs.2500/- without prejudice to his contentions towards the decree debt. If it is seen that the above conditions are being complied with, the court below will afford one opportunity to the petitioner for adducing whatever evidence he has at his command in rebuttal of the evidence adduced

by the respondent and pass fresh orders on the basis of the entire evidence coming on record at the earliest.

srd **PIUS C.KURIAKOSE, JUDGE**